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A Note on This Publication

To obtain credit to buy land, farm machinery and equipment, buildings, or inputs for production, farmers normally must sign security contracts to secure the debt. These security documents specify rights, remedies and responsibilities of the lender and borrower.

This booklet has been designed to help you understand what these security contracts are — so you know what you're signing and how it will affect your financial situation. You'll be able to determine what form of security is the most appropriate for your financial needs, and what actions you can take to help preserve your interests. You'll also know what rights you have and what steps you can take if you develop financial difficulties.

This publication will be of most use to you **before you sign.** It will give you an understanding of your legal rights and of the lender's rights. You'll then be able to act in your best interests when you provide security to a lender. When signing a security document, it's always wise to exclude exempted personal property if at all possible.

Types of Security Contracts Available to Manitoba Farmers

August 1990

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PART ONE:
Real Property Security Contracts

The legal term "real property" means land, and includes all things permanently affixed to it — trees, buildings, fences, etc. "Real property security agreements" are security agreements that give the lender an interest in land. There are several types of real property agreements that will be discussed in this publication:

- mortgage;
- memorandum of deposit and charge;
- caveat;
- lien.

Mortgage

Definition

A real property or land mortgage, as a legal document, gives the lender an interest in land as security for a loan. It specifies a particular property or properties for either a specific or maximum sum of money. This security interest gives the lender a right to force sale of the property, or to take title to the property, if the borrower fails to repay the loan. As well, most mortgages contain a personal covenant or promise which obligates the borrower to pay any amount of the mortgage loan not recovered from the sale of the mortgaged property. However, if the lender takes title to the property instead of selling it, the personal covenant cannot be enforced.

First, second and third mortgages, in that order, show the priority of claims to a property by their dates of registration.

Federal legislation restricts mortgage lenders to maximum lending limits. For example, chartered banks are not allowed to lend more than 75% of the fair market value of the property, unless the mortgage is insured. Farm credit lenders — the Manitoba Agricultural Credit Corporation and the Farm Credit Corporation — are usually restricted to a maximum loan amount of 80% of the appraised property value.

Purpose

Mortgage loans can provide financing in a variety of circumstances. For example, they can be used for:

- the purchase or construction of a new home or the addition to an existing home;
- the acquisition of farm land for a beginning farmer or to increase income and equity for farm growth and eventual retirement;
- the purchase or construction of farm buildings or the addition/improvement to existing farm buildings;
- the expansion and development of different enterprises that diversify and stabilize farm income;

- the purchase of machinery;
- the consolidation of debt to reduce the drain on cashflow, and allow a farm to operate more smoothly in meeting its financial commitments.

Mortgagor

A mortgagor is a borrower (person, persons or corporation) that gives an interest in the property (land) to a lender as security.

Mortgagee

A mortgagee is a lender — a bank, credit union, government agency, private individual, etc. — that receives, as security, an interest in the property (land) from a borrower in exchange for providing a loan.

A Standardized Mortgage

Mortgage documents are generally standardized, although some terms and conditions vary according to each lender's requirements. The terms of a standardized mortgage are:

- **Details of Mortgage and Property Covered**

  Names and addresses of mortgagor (borrower) and mortgagee (lender) are listed, and a detailed legal description of the property being mortgaged is outlined. It should be noted that a significant amount of financial risk in real property financing can be reduced *if exempted property is not included as security* under a mortgage. Exempted property is land that is free from creditor's claims and court judgments, as well as property exempted under the Dower Act (page 6) and Judgments Act (page 18).

- **Covenant to Repay**

  The mortgagor makes a personal covenant (promise) to repay the mortgage debt to the mortgagee, according to agreed terms and interest rate. The specific or maximum sum of money secured by the mortgage is set out here.

A promissory note may also be attached or referred to in the mortgage. It is a legal document containing a written promise to pay a certain sum of money to a specified person or institution, either on demand or in regular payments. A promissory note is primarily used when the borrower obtains the borrowed money over *several installments* – to the maximum amount specified in the mortgage.

There are two ways to repay a mortgage:

- **Demand Repayment**

  Under a demand mortgage, the borrower is required to repay the *total debt* upon demand of the lender, at any time. Where there is a maturity date, the lender can demand full repayment at any time *after* the maturity date.

  The maximum interest rate must be stated. It will either be fixed for the term of the loan, or will float with the market rate. Interest payments may be required at time of demand or in regular specified intervals. Normally, the borrower makes periodic payments of principal and/or interest according to informal arrangements with the lender.

- **Regular Repayment**

  Under a regular repayment mortgage, the borrower repays the debt in installments at specified dates. Three regular repayment options are available to a borrower:

  1) Fixed Principal Payment Plan (non-amortized)
     Under this plan, the same principal payment amounts are made over the repayment period of the mortgage. Principal is the loan amount outstanding, without interest. Interest is *added on* to each payment, and varies according to the outstanding principal. The interest rate may be fixed or may float according to the current market rate.

  2) Blended Payment Plan (amortized)

     Under this plan, payment amounts remain the same. The payment covers *both* principal and interest over the period of the mortgage. Payments are applied first to the outstanding interest, and then to the principal. Because principal is reduced over time, the portion of the payment that is interest decreases, and the portion that is principal increases. The interest rate is fixed for the term of the mortgage.

  3) Variable Rate Term Payment Plan
     This plan is similar to the blended payment plan because each payment includes both principal and interest. However, the interest rate fluctuates with the market rate, thereby increasing or decreasing the interest portion of the payment, and therefore, the amount of payment itself. If the plan calls for each payment to remain the same, the repayment period of the mortgage will be lengthened or shortened to accommodate any increase or decrease in the interest rate (that is, extra payments to cover added interest or fewer payments to make up for lower interest).

- **Mortage Term**

  The mortgage term is the length of time the mortgage is in effect prior to *maturity*. After the maturity date, the mortgage loan is payable upon demand of the lender. At this time, the mortgage must either be renewed with the lender, made with a different lender, or the loan repaid in full. The mortgage term may be from one to five years.

- **Interest**

  While most mortgage lenders charge interest based on annual or semi-annual compounding periods, some lenders utilize quarterly or monthly compounding periods. This is an important consideration, since the borrowing cost increases with the frequency of compounding in a

year. For example, the *actual* annual rate of interest when *quoted* interest of 10% per annum would be:

annual compounding.....10%
semi-annual compounding.....10.25%
quarterly compounding 10.38%
monthly compounding.....10.47%.

- **Prepayment Privileges**

The prepayment of principal — in full or in part — at a date earlier than the maturity date of the mortgage, may be allowed in the mortgage. When prepayments are allowed (with or without a prepayment penalty charge), it is considered an *open mortgage*. When a mortgage does not allow a prepayment earlier than the maturity date of the mortgage, it is considered a *closed mortgage*.

- **Additional Covenants**

The mortgagor *must make additional covenants* to the mortgagee to maintain and preserve the secured value of the property. They include the mortgagor's promise to:

- keep the property adequately insured against loss or damage by fire in the name of the mortgagee;
- pay taxes and/or liens on mortgaged property;
- keep premises in a reasonable state of repair;
- have a clear title to mortgaged property, free from all registered legal money claims such as liens and mortgages (called encumbrances), except those agreed upon, so that the lender can register a first mortgage.

Some mortgages include additional mortgagor's covenants, such as repayment of mortgagee's administrative costs and assignment of a life insurance policy to the mortgagee.

- **Waiver of Dower Rights**

The Dower Act is a provincial law designed to protect one spouse's interest in a portion of the other spouse's land. This protected land includes the homestead and adjoining property, and cannot exceed 129 hectares or 320 acres. Most mortgages require that the spouse waive his/her rights to this land, and that he/she give the lender a prior security

interest in this land. Waiver of this right should not be given lightly and should be given only if all other forms of security available are inadequate for purposes of the loan. To waive dower rights places one's home at risk.

If dower rights are *not waived* on the homestead and adjoining property, *no court judgment* or claim can be registered against that property in event of non-payment.

Rights of the Mortgagor

The mortgage agreement, Mortgage Act and Real Property Act give the mortgagor specific rights to use and sell the property, and to obtain a clear title:

- The mortgagor is entitled to possession of the property without interference from the mortgagee, as long as the mortgage terms are being satisfied.
- The mortgagor is entitled to request a statement of his/her account with the mortgagee, at no cost, once a year or *as needed* in order to *pay off* the mortgage or for sale purposes (in the case of an open mortgage).
- The mortgagor is entitled to request a statement of his/her account, at no cost, at the end of the mortgage term (in the case of a closed mortgage).
- The mortgagor is entitled to sell the property and apply the proceeds to the mortgage. If so specified by the mortgage agreement, consent may be required by the mortgagee to permit the sale.
- The mortgagor is entitled to reinstate the mortgage agreement by bringing any late mortgage payments up to date. This can be done until the property is sold, or the final order of foreclosure is given. If payments are overdue, the following procedures must by followed:
  - If payment is made *within three months* of last scheduled payment, arrears of principal and interest must by paid — plus accrued interest to the date of payment. A notice can be given to the mortgagee, but is not required.
  - If payment is made *after three months*, principal and interest arrears must be paid — plus accrued interest

to the date of payment, *plus* three months additional interest on the principal money in arrears. A written notice can be given to the mortgagee, stating the intended payment date, but it is not necessary.

- If payment is made *prior to public sale* of the property, the arrears in principal and interest must be paid — plus accrued interest to the payment date. As well, the mortgagee's costs of preparing the property for sale are also due. Written notice is not required.
- If the property is not sold at a public sale, payment can be made prior to the final *order of foreclosure*. Arrears must be paid — plus accrued interest and costs of unsuccessful sales to the date of payment. Written notice is not needed.

- The mortgagor is entitled to obtain a clear title on the property by:
  - paying the outstanding mortgage balance at maturity date on a closed mortgage;
  - paying the outstanding mortgage balance and any applicable prepayment penalty charges before the maturity date on an open mortgage;
  - paying the mortgage balance, plus accrued interest and mortgagee's costs if payments have lapsed and the property is put up for sale or the mortgagee is foreclosing.
- If the property is sold because of a lapse in payments, the mortgagor is entitled to receive any surplus arising from the sale. This is any amount above the total principal owing, accrued interest, and mortgagee's costs incurred to the date of sale.
- In the event of non-payment, the mortgagor is entitled to retain ownership of other property if it is *not provided as security* in the mortgage or through the personal covenant in the mortgage. This would include land, machinery, equipment and inputs that are exempt from court judgments by the Judgments Act and Executions Act (see Manitoba Agriculture publication *Knowing Your Legal Rights*).

Rights of the Mortgagee

The mortgagee is given specific rights under the Mortgage Agreement, Mortgage Act and Real Property Act:

- The mortgagee is entitled to receive repayment of the mortgage debt as per terms of the agreement.
- If payments are not made as specified, the mortgagee is entitled to sell the property and apply the proceeds to the outstanding debt.
- The mortgagee is entitled to apply any insurance claim proceeds for losses or fire damage to the outstanding mortgage balance, or to rebuild or repair damage.
- The mortgagee is entitled to take steps to recover *immediate full repayment* of the debt if any of the mortgagor's actions impair the value of the security. A list of these actions, referred to as "events of default," is outlined in the mortgage agreement and includes devaluing the property, disposing of the property without the lender's consent, and bankruptcy. However, the *most common* event of default is the mortgagor's failure to repay the debt when it is due.

  After *one month of payment default*, the mortgagee can send a notice to the mortgagor requesting the money due within a specified time. As well, a copy of this notice is sent to the Land Titles Office. If the mortgagor is still in default one more month later, the mortgagee can apply to the Court of Queen's Bench under the provincial *Family Farm Protection Act* for permission to recover the debt. (See page 20.)

Registration and Discharge

After the district registrar of the Land Titles Office examines the mortgage agreement and the certificate of title, the mortgage is registered on the land title of the mortgaged property.

When the mortgage has been repaid in full — or if the property is sold or the mortgagee forecloses — the mortgage can be discharged from the land title of the mortgaged property for a fee; this should be done by the mortgagor.

Memorandum of Deposit and Charge

Definition

A memorandum of deposit and charge is a security document giving a lender the *option* to register a security interest against a land title, which is left on deposit with the lender by the borrower (depositor).

"Charge" refers to the borrower's debt or obligation that is not yet secured against real or personal property. The debt can be specific in amount (a fixed charge) or flexible in amount (a floating charge).

Purpose

A memorandum of deposit and charge can be used as security for any loan similar to a mortgage. This method of financing is simpler to use than a mortgage and is less costly.

Characteristics

A memorandum of deposit and charge includes a description of the property covered by the certificates of title deposited with the lender. It indicates the charge is to include all unsecured monies owed to the lender.

The covenants (promises) of the depositor (borrower) included in the memorandum of deposit and charge are:

- a promise to repay the debt with accrued interest according to the repayment arrangements of the promissory note(s) that accompanies the memorandum;
- a promise by the borrower to sign a registerable first mortgage at the lender's option if he/she fails to repay the debt when due or to make required payments;
- a promise to ensure that the certificates of title are free from mortgages, liens and other encumbrances;
- a promise to keep all property and premises insured against loss or damage by fire.

With a memorandum of deposit and charge, the lender can register a caveat (see next section) against the property to restrict others from registering a prior claim.

In a deposit and charge agreement, similar to the situation with a mortgage, dower rights may be waived by the depositor's spouse in order to allow the lender to create an enforceable first mortgage.

Caveat

Definition

A caveat is a registered document that allows a person other than the owner to register a claim or interest against land (real property). The person registering the claim is the *caveator*, and the owner is called a *caveatee*. A caveat on a particular parcel of land forbids any sale registration or registration of a claim against that land unless it is *subject to* the claim of the caveator (except property taxes). In other words, the terms of the caveat must be satisfied prior to satisfying the terms of any claims registered after the caveat was registered.

Purpose

A caveat can be used to register the following interests and claims against a parcel of land:

- lease claims;
- unregistered mortgages, memorandums of deposit and charge;
- sales contracts (accepted offers to purchase or offers for sale);
- options to purchase;
- rights of first refusal;
- easements;
- mineral and oil rights;
- zoning and building restrictions (information is available at the local municipal office);
- agreements for sale;
- unpaid vendor's liens, tax liens;
- "restrictive covenants" (promises that the land will not be used in certain ways);
- any other agreement which constitutes an interest in land.

Characteristics

A caveat document details the name and address of the person filing the claim and the specific claim or interest. It also includes a legal description of the land and the landowner's name, as well as an affidavit by the caveator declaring that he/she has a valid claim or interest in the land.

Rights of the Landowner

The Real Property Act gives a landowner specific rights as protection from invalid claims or interests:

- The owner is entitled to receive immediate notification of any filed claim.
- The owner is entitled to challenge the caveat in court or to ask the caveator to discharge the caveat — either before or after the caveat is registered.
- The owner is entitled to sue the caveator for damages caused by a wrongful caveat.
- A new owner is entitled to ask the seller of the property to discharge any caveats that he/she is not prepared to take responsibility for.

Lien

Definition

A lien is a claim or charge registered against property by a person or company to whom the owner owes a debt. If the owner does not repay the debt, the property can be seized and sold to repay it.

Purpose

A lien is used to recover a landowner's unpaid property taxes, building costs or court judgments.

Tax Lien

A tax lien occurs when a landowner fails to pay property taxes over a long period of time (one or two years), and the municipal authorities register a charge against the title. The local municipality can then apply to the district registrar of the Land Titles Office to obtain title to the property. (If there is more than one title, a separate application is made for each parcel of land.) The municipality can then sell the property at a tax sale to recover the taxes due.

If the land is sold for more than $2,000, the district registrar of the Land Titles Office monitors the tax sale to ensure fairness and openness.

Builder's Lien

A builder's lien is established when a person or company files a claim against property for which he/she has provided labor, services or materials and for which he/she has not been paid. It can be filed by both contractors or sub-contractors.

In order to protect the sub-contractor, the Builder's Lien Act requires a property owner to hold back from the contractor 7.5% of the contract price of labor, services or materials for a period of 40 days after "substantial performance" of the contract (98% complete). If a lien is filed against the property by a sub-contractor who worked for the contractor or supplied material for him/her, it can be paid out

of this "holdback" fund. The property owner is only liable for the amount in the holdback fund, unless he/she fails to keep such a fund. Then he or she can be liable for the full unpaid amount. However, at no time is the property owner liable for *more than* the full contract price plus the 7.5% holdback amount.

Any person entitled to recover payment must file a claim at the Land Titles Office within 40 days of the work, service or materials being last supplied or completed and there must be an affidavit in support of the claim. A notice of claim will be sent to the landowner and contractor, and to their lawyers, as well as anyone else with a mortgage lien or encumbrance on the property.

Once the "holdback period" has expired (40 days), and has not been extended because of additional work done, a builder's lien cannot be filed against the property. The holdback funds would then be turned over to the contractor as the final installment of the contract.

> ***Note:*** *A registered lien takes effect from the date the labor, services or materials were provided. It has priority over all judgments, executions, etc. registered in the Land Titles Office after it, and also takes priority over a mortgage registered after it. If the mortgage was registered before the lien, then the mortgage has priority — but only on the value of the property before improvements were made.*
>
> *A lien registered for wages has priority over all other liens filed in the holdback period.*

Rights of Sub-Contractors, Workers and Suppliers

- A sub-contractor, worker or supplier is entitled to register a lien against property on which he/she worked and was not paid. He/she has a right to obtain a court settlement.
- He/she is entitled to receive payment from the "holdback" account, which must be paid into court by the landowner and contractor upon judgment.
- He/she is entitled to sue the party who actually contracted them to supply labor, service or materials for any deficiency in the court settlement.

Rights of Landowner

The landowner has several rights under the Builder's Lien Act:

- If he/she has held back 7.5% of the contract price for the required period, he/she is not obligated to pay more to settle the lien.
- If the landowner has not held back 7.5% of the contract price, he/she may be obliged to pay this sum — plus the contractor's total price — if a lien is filed against property. The 7.5% (or part of it) will be used to settle the lien.
- If the spouse of the landowner has not signed away dower rights, he/she is entitled to these rights — even if the land must be sold to pay a lien. The value of these rights are deducted from the sale proceeds.

Protection for the Contractor

If the property owner has not completely paid the contractor, he/she can register a lien against the property as described. Once the case goes to court, a judgment might be awarded for the cost of unpaid labor, service or materials, and will be ordered paid by the holdback money. If there is no holdback fund, or it is not enough, the court may satisfy the lien by:

- ordering a sale of the land to pay the lien;
- ordering the sale of material on the land to pay the lien;
- ordering the payment of any shortfall of funds after the sale of the materials or the land;
- appointing a receiver to collect rents and profits from the land in order to pay the lien.

Other Liens

Another type of lien occurs when a creditor obtains a court judgment in Small Claims Court or Court of Queen's Bench on any type of debt. He/she then registers the claim against the debtor's land in the Land Titles Office to form a lien (see Manitoba Agriculture's *Knowing Your Legal Rights*).

If the court orders a judgment to be paid in installments, these installments can be registered in a Land Titles Office to form a lien on all of the debtor's lands located in that particular Land Titles district.

If a debtor does not pay the required installments, the lien holder can obtain a court order to sell the land. However, the lien must be registered for at least one year, and in the case of farm land, the lienholder must first apply to the Court of Queen's Bench under the *Family Farm Protection Act* (see page 20).

Exemption of Farm Land from Court Judgments

As long as farm land, the house or buildings have not been pledged as security, the Judgments Act protects a farmer in debt. An order for the sale of farm land will not be allowed if the land is less than 64.7 hectares (160 acres), if the family lives on it, and if the farmer is cultivating it. If the land is more than 64.7 hectares, the surplus can be sold. The Judgments Act also prevents the sale of a farmer's house, stables or barns, limited items of machinery, livestock, feed and seed.

General Information on Land Titles

Why a Land Title Should be Searched

The land title should be searched *before* the buyer purchases the land. This will reveal any mortgages, liens, encumbrances or judgments on the property which may affect future planning. If the buyer assumes a mortgage, this search becomes even more important.

A landowner should periodically check his/her land titles in order to keep up-to-date records of security given to lenders. This type of foresight will be particularly useful in the event of financial distress. As well, it will provide a copy of the owner's mortgage if one is not otherwise available.

For a small fee, the Land Titles Office will perform a land title search. The roll number or the property's legal description is all that is required in order to obtain a copy of the certificate of title.

Notice of Change

Mortgages, caveats, liens and judgments are now all registered on the actual land title at the Land Titles Office. Previously, liens and judgments were registered in the general registry listing, but as of February 19, 1989, all new

registration of judgments or liens must be registered against specific property and the registry was abolished after August 17, 1989.

Location of District Land Titles Offices

All land titles, and the general registry for all liens and judgments registered before February 19, 1988, are located in the six district Land Titles Offices in Manitoba:

1. **Winnipeg**: Lower Level, Woodsworth Building, 405 Broadway, R3C 3L6, Phone: 945-2042
2. **Brandon**: 705 Princess Avenue, R7A 0P8, Phone: 727-5483
3. **Dauphin**: 308 Main Street South, R7N 1K7, Phone: 638-4561
4. **Morden**: 351 Stephen Street, R0G 1J0, Phone: 822-4410
5. **Neepawa**: 329 Hamilton Street, R0J 1H0, Phone: 476-2106
6. **Portage la Prairie**: 103 3rd Street N.E., R1N 1N8 Phone: 857-9711.

Priority of Registered Claims

The registered claims on a land title must be paid in a specific order when the land is sold either at a public or private sale. Recovery of secured claims are made in the following order:

1) municipal taxes;
2) mortgages (based on the original property value) registered prior to liens, in order of their registration;
3) liens for wages, regardless of the registration date;
4) other lienholder claims (materials and other court judgments) in order of date of registration;
5) mortgages registered after liens.

Net proceeds are paid to creditors and the remaining balance belongs to the landowner.

The Family Farm Protection Act

Under this act, the mortgagee can apply for permission to the Court of Queen's Bench to recover the debt in one or more of the following ways:

- Permission to enter and take possession of mortgaged land, to receive rents and profits, and to lease it out.
- Permission to apply in writing to the district registrar of the Land Titles Office for an order to sell, which will permit the mortgagee to sell the mortgaged land either publicly or privately.
- Permission to sue the mortgagor in the Court of Queen's Bench, on the mortgagor's personal promise to pay, for the full amount owing.
- Permission to make an application to the district registrar for an order of foreclosure which can only be done six months after the payment due date. The written application must indicate that there has been a continuous six-month default and that even though the land was offered for sale at a public auction (after notifying the mortgagor), the highest bid was not enough to satisfy the mortgage debt and the expense of the sale.

Once a mortgagor has made this application, he/she/it must send a copy of the request to the farmer (mortgagor) and to the Manitoba Mediation Board (MMB) within 30 days. Then, within 90 days, the MMB will file a report with the court — including an analysis and evaluation of the farming operation, and the farmer's management abilities, as well as possible solutions to the problem. After this, with the farmer receiving notice at least 15 days prior, there will be a court hearing of the mortgagee's application. The court will either grant permission to the mortgagee's application, grant other appropriate action, or adjourn the hearing because it is not satisfied that the request is fair.

If the mortgagor has requested and is given permission to apply to the district registrar for foreclosure, there is a month grace period given to the farmer after the registrar receives the application. If the farmer still cannot pay, an order of foreclosure is issued, the mortgage debt is extinguished, and the mortgagee is given legal title to the mortgaged property.

The Farm Debt Review Act

The *Farm Debt Review Act* and the Farm Debt Review Board ensure that farmers in financial difficulty or those who are actually facing foreclosure have access to an impartial third-party review and possible re-financing. The Farm Debt Review Board is a federal body that is similar to the Manitoba Mediation Board and the *Family Farm Protection Act*, except that it does not have legal authority to force an agreement. Its role is to bring farmers and creditors together in order to reach their own agreements.

A creditor intending to foreclose on a farming operation must provide the farmer with written notice and must advise him/her of the right to a review under the *Farm Debt Review Act*. The farmer can then apply for a review, which will be undertaken by Farm Debt Review Board staff and an independent panel. When the review is finished and a report compiled, an attempt is made to seek an arrangement between the farmer and the creditor so that the farmer can continue operations. If an agreement can be reached, a legal contract is signed by both farmer and creditor.

PART TWO:
General Security Contracts

General security contracts are required for many short and intermediate term loans, and use all or a portion of a farmer's general assets as security — including inventory, equipment, accounts receivable, insurance claims, etc., but excluding land or buildings.

There are several types of general security contracts used by lenders:

- debenture;
- general security agreement;
- assignment of interest;
- pledge of collateral;
- personal guarantee.

Debenture

Definition

A debenture is a legal document that gives a lender a security interest in all of a corporate borrower's assets (except real estate) for providing a loan. These assets are both those *currently owned* and those that *will be acquired*. The funds provided to the borrower are in the form of small business development bonds, loans and advances.

Characteristics

Normally, a distinct new debenture is drawn up for each corporate borrower, with specific terms and conditions agreed upon by the borrower and the lender. Terms include loan amount, repayment plan, and rights and obligations of both parties. It is normal for all of the borrower's assets to be used as security. The borrower's debt or obligation would be either "fixed" or "floating" — that is, for a fixed amount or up to a set maximum amount, respectively.

If a borrower defaults on a loan payment secured by a debenture, the lender can apply to the courts for a receiver to step in and manage the business, or for collateral to be repossessed. A lender is not required to send notice of either of these actions to the borrower.

General Security Agreement (GSA)

Definition

A general security agreement is a legal document giving a lender a security interest in all general assets *owned* or *later acquired* by a borrower in exchange for a loan or advance. A GSA is similar to a corporate debenture, except that a GSA is used for non-corporate borrowers and for lower loan amounts. As in a debenture, a lender acquires a charge against a borrower's general assets for a fixed or floating amount to a set maximum. Unlike a debenture, under a GSA, a borrower must receive notice of the appointment of a receiver or seizure of collateral.

Characteristics

All GSA documents have a similar format and include the following sections when relating to the farm business:

- **Description of the Security**

  This can include:

  - all inventory including livestock (born and unborn), and all grains and crops maturing in the field;
  - all equipment, tools, vehicles and furniture *without exception*;
  - all receivables and all rights to insurance claims;
  - any other assets of the borrower.

- **Representations of the Borrower**
  - Borrower states that specified collateral exists and belongs to him/her free from all encumbrances.
  - Borrower states that any specified receivables are enforceable and accurate.
  - Borrower states that locations of business, its records, and list of its collateral are complete and accurate.

- **Covenants of the Borrower**
  - Borrower promises to notify the lender of any changes affecting the value of the security, and of any acquisition, disposals or losses of collateral.
  - Borrower promises to keep collateral in a good state of repair, pay all taxes and levies on the collateral, and insure it against loss or damage by fire.
  - Borrower promises to operate the business in a proper and efficient manner, and provide the lender (upon request) with any additional information or documents regarding the collateral.

Rights of the Borrower

A general security agreement, the Personal Property Security Act, and the Consumer Protection Act provide specific rights to the borrower:

- Quiet possession of the collateral as long as payments are being made.
- Receipt of any surplus from the sale of collateral if a sale becomes necessary (the lender is first repaid any outstanding debt and any costs of the sale).
- If collateral is seized, receipt of a written notice of seizure from the lender within 48 hours of seizure.
- A 15-day period from notice of seizure before initiation of sale to allow for redemption of the collateral.
- Redemption of collateral at any time (before the lender disposes of it) by:
  - paying the debt's total outstanding balance;
  - paying the interest arrears, accrued interest to the date of payment, and all reasonable expenses of the lender for holding, repairing, and preparing the collateral for sale.
- Rights specified in the Consumer Protection Act (see Manitoba Agriculture publication *Knowing Your Legal Rights*, page 30).

Rights of the Lender

A general security agreement and the Personal Property Security Act provide specific rights to the lender:

- Periodic verification of the existence and state of collateral by the borrower.
- Transfer of any securities (stocks, bonds, etc.) included as collateral into the lender's name.
- In the event of payment default, the right to notify the borrower's debtors of the security interest and to directly collect the money from them.
- Receipt of proceeds from a sale of collateral. This includes repayment of the amount borrowed, and interest outstanding, as well as any reasonable expenses for taking, holding, repairing and preparing the collateral for sale. It does not include any surplus of money from the sale.
- The right to sue the borrower if, after the sale of the collateral, proceeds are not sufficient to pay the debt and the costs of the sale.
- If the prospect of repayment is impaired or the security is in jeopardy, the right to demand the immediate full repayment of a borrower's debt (called acceleration). This may occur when a borrower:
  - fails to make a payment at the proper date;
  - dies, files bankruptcy, or threatens not to carry on business;
  - receives a court judgment or enforceable lien against collateral;
  - makes a false statement or omits a liability in any certificate, statement or audit report.
- Recovery of the full debt amount either directly or by appointment of a receiver.
- The right to take or have the receiver take possession of the collateral, or carry on all or part of the borrower's business, by any method *permitted by law.*

Priority of Claim

The date a GSA is registered in the Personal Property Registry (located in Winnipeg) establishes when a secured lender has claim to a borrower's collateral. An exception to this priority of claim occurs with a security document used by farm suppliers, the purchase-money security interest (PMSI), which is discussed on page 48.

Assignment of Interest

Definition

In return for providing a loan or advance, a lender can use an assignment of interest as security. This legal document transfers to the lender:

- the right to receive money due to the borrower from a particular transaction or particular debtor(s);
- the right to possess a particular asset.

The borrower is the assignor and the lender is the assignee.

Purpose

Assignments of interest can secure various financing needs such as:

- a revolving line of credit;
- full payment of an outstanding mortgage balance;
- the purchase of farm inputs or equipment.

There are several types of interests or assets normally assigned by farmers to a lender:

- book debts;
- mortgages;
- crop insurance;
- life insurance;
- warehouse receipts;
- payments due for milk production.

Assignment of Book Debts

An assignment of book debts is a legal document which assigns a borrower's right to receive money due from his/her accounts receivable to a lender. This security is often used to obtain operating loans or revolving lines of credit.

Characteristics

An assignment of book debts normally includes several sections:

- **Description of Security**

This lists all money due to the borrower (assignor) — now or in the future — from the sale of goods or services, claims for losses or damage by fire, judgments, liens, securities, contracts, notes, etc.

- **Terms and Conditions**

The borrower or assignor gives the lender a power of attorney over his/her receivables and the lender or assignee is entitled to collect money directly from the assignor's debtors.

- **Covenants**

The assignor makes several promises to the lender:

  - to pay all costs resulting from the lender exercising power of attorney;
  - to transfer all the necessary records and documents to the lender;
  - to secure future debts with this assignment (as with a revolving line or credit).

Rights of the Lender

- The lender has the right to give notice to the assignor's debtors to make payments directly to the lender rather than to the assigner. In practice, this occurs when a borrower does not meet the terms of the loan agreement.

- If a borrower fails to repay the debt when due, the lender may:
  - apply any of the assignor's receivables collected to any portion of the debt;
  - exercise the power of attorney to recover any money due by the assignor's debtors;
  - sue the assignor for any shortfall between receivables collected and debt due.

Rights of the Assignor

The assignor can operate the business as normal and continue to collect receivables, unless he/she fails to repay the debt when due.

Assignment of Mortgage

A person who holds a mortgage as security for a loan made to another person may assign the rights under this mortgage to his/her own lender as security for his/her debt. The assignment of a mortgage is similar to an assignment of book debts, except that only a mortgage is assigned to the lender. It includes monies due now or in the future from a real property or from a chattel mortgage (see page 40).

As assignee, the lender gains all the rights of the original mortgagee under the mortgage document. This includes the right to ask the court to grant power of sale, foreclosure or judgment against the mortgagor in order to obtain repayment.

Assignment of Crop Insurance

An assignment of crop insurance is a legal document that assigns a borrower's right to receive money from a crop insurance claim to a lender as security for a debt. The agreement specifies a maximum amount of crop insurance proceeds from the Manitoba Crop Insurance Corporation to be directed to the lender. The assignment term is one year, with the Manitoba Crop Insurance Corporation acknowledging and consenting to the assignment.

Assignment of Life Insurance

An assignment of life insurance is a legal document that assigns the rights of a borrower's beneficiaries to receive claim money to a lender a security for a debt. Often this is used as a supplemental security agreement to repay an outstanding debt in the event of a borrower's death.

Characteristics

The assignment of life insurance is specific to money due on the life insurance policy. It assigns to the lender death benefits from the life insurance policy, any prepaid premiums made to the insurer, and other benefits in connection with the policy.

The assignor promises to maintain the value of the life insurance policy by:

- paying the premiums and keeping all receipts;
- keeping the policy valid;
- providing all documents necessary to effectively assign the policy to the lender.

Rights of the Lender

If a borrower fails to repay the debt when due or fails to pay insurance premiums when due, the lender may:

- pay premiums to keep the policy valid and charge these premiums to the borrower's account;
- sell the life insurance policy;
- receive the cash surrender value of the life insurance policy or surrender the policy for a paid-up policy with the insurer;
- sue the borrower (or the borrower's estate) for any shortfall of funds needed to cover any unpaid debt.

Rights of the Borrower

The borrower has rights to any surplus of proceeds from insurance claims after the outstanding debt is paid in full.

Assignment of Warehouse Receipts

An assignment of warehouse receipts is a legal document which assigns the borrower's right to possession of goods held in storage (warehouse receipts) or while in the course of transit (bills of lading) to the lender as security for a debt. In the case of farmers or the agricultural industry, the goods normally associated with warehouse receipts or bills of lading are grains and oilseeds.

The agreement includes a description of all goods assigned to the lender, a schedule listing warehouse receipts and bills of lading, and the location of the assigned goods. If a borrower fails to repay the debt when it is due, the lender may repossess and sell the goods assigned as security. The lender may also sue the borrower for any deficiency in recovering full repayment of the debt.

Letter of Direction of Payments Due to Milk Producers

Milk producers utilize specialized buildings and equipment that maintain their full value as collateral only through their ability to be used for milk production. This production ability is entirely dependent on the total allowable production quota (TAP) assigned by the Manitoba Milk Marketing Board. Therefore, to ensure full value for this collateral, the Milk Marketing Board has developed two security contracts to ensure that the quota remains with the milk production unit. They are:

- Letter of Direction and Undertaking Re: Complete Farm Security;
- Letter of Direction and Undertaking Re: Dairy Cows and/or Equipment Security.

Letter of Direction and Undertaking Re: Complete Farm Security

This security contract is in the form of a written application from a milk producer, directing the Board to accept a written request from his/her lender to re-allot the quota to the lender if the lender takes possession of the *complete farming operation* as a result of legal action. This allows the lender to market the milk from the facilities it has taken possession of, and to sell the farm as a milk production unit.

The milk producer agrees not to apply to the Board for a re-allocation of the quota to any other party without the written approval of the lender. He/she also agrees not to sell the quota in the Monthly Quota Exchange System without the written approval of the lender. Finally, the milk producer directs the Board not to accept an offer for *sale* of the quota in the Monthly Quota Exchange System without the written consent of the lender.

Letter of Direction and Undertaking Re: Dairy Cows and/or Equipment Security

This security contract is in the form of a written application from a milk producer to the Board, requesting that the lender receive the dairy cows and/ or equipment used in the dairy as security on a loan to finance the operation.

The milk producer agrees not to sell the quota in the Monthly Quota Exchange System without the written approval of the lender and also directs the Board not to accept an offer for *sale* of the quota in the Monthly Quota Exchange System without the written consent of the lender.

Letter of Direction Re: Producer Cheques

This security document is a written application from a milk producer to the Board, requesting that all future milk cheques payable to the producer be forwarded to a particular lender for deposit to the producer's account.

This document is not used directly as security, since the Board does not allow a producer to assign any funds owed by the Board to the lender. However, it does assure the lender that the milk producer is depositing milk cheques with the lender. An affidavit accompanying the letter of direction ensures that it was issued to facilitate bone fide new financing or refinancing of the producer,q and not to secure existing debts.

Pledge of Collateral

Definition

A pledge of collateral is a legal document in which a borrower pledges certain assets to a lender as security for a loan or advance. The borrower retains title to the assets, but gives the lender a right to sell the assets if he/she fails to repay the debt when due. Pledged collateral can be stocks, bonds, term deposits, account balances or Canada Savings Bonds.

The lender will hold the pledged collateral, and all interest and dividends associated with the collateral, in trust for the borrower. Upon full debt repayment, the lender will return the collateral held in trust. The borrower is the pledgor and the lender is the pledgee.

Characteristics

A pledge of collateral has two main sections:

- **Description of Security**

Any stocks, bonds, Canada Savings Bonds, term deposits or minimum account balances are detailed in a schedule and deposited with the lender. All interest or dividends associated with these assets are normally included as security.

- **Terms and Conditions**

The pledgor names the lender as power of attorney for all collateral pledged. Often, separate powers of attorney are utilized for individual certificates (stocks, bonds, etc.) to allow for the sale of individual collateral by the lender.

Rights of the Lender

If the borrower fails to repay the debt when due, or if the collateral value is diminishing, the lender may:

- sell the pledged collateral and apply the sale proceeds to recover the debt;
- purchase the pledged collateral at a public sale, free from the borrower's right to redeem collateral;

- transfer into his/her/its own name any shares, bonds, etc.;
- sue the pledgor for any shortfalls between sale proceeds and amount owed;
- refuse to honor any borrower's cheques that might jeopardize the security;
- withdraw or cash in account balances, term deposits and Canada Savings Bonds, and apply the proceeds to recover the debt.

Rights of the Borrower

If the debt is in arrears, the pledgor can redeem his/her/its interest in the pledged security by making full repayment — any time before the lender disposes of it. In the event of a sale, the borrower is entitled to receive any surplus from the sale proceeds that is not required to cover the debt.

Personal Guarantee

Definition

A personal guarantee is a legal document in which a person other than the borrower promises to repay the borrower's debt (or a stated sum) to a lender should the borrower fail to repay the debt. A personal guarantee is often used as security for loans or advances for family farm corporations, young farmers, or borrowers having insufficient equity to secure the debt.

The person who promises to repay the other person's debts is the *guarantor*. The borrower who requires the guarantor to secure a loan or advance from a lender is the *principal debtor*.

Characteristics

Personal guarantees include three sections:

- **Debts to be Secured by the Personal Guarantee**

This section states that all debts or a portion of the

borrower's debt with the lender are guaranteed by the guarantor (includes both existing debts and those taken in the future).

- **Limit of Liability of the Guarantor**

The guarantor declares responsibility for all the borrower's debts up to a specified maximum amount. Where no maximum is stated, the personal guarantee is considered unlimited and the guarantor is fully liable for all the borrower's outstanding loans, whether incurred now or in the future. If the personal guarantee is limited, a maximum amount is stated and it is for this amount, together with accrued interest, for which the guarantor may be liable.

- **Terms and Conditions**

The guarantor promises to repay any of the borrower's debts to the maximum amount of the stated guarantee — including present and future debts. The lender does not have to first try and collect from the borrower before calling on a guarantor to pay the debt.

The guarantor has the right to provide written notice to the lender of his/her/its unwillingness to be liable for *further* loans or advances to the borrower. After such notice, the guarantor is no longer liable for *new* loans or advances.

The lender is allowed to take or release any security provided by the borrower for the loan(s) as necessary.

If several people guarantee a borrower's liabilities, the guarantees are cumulative. For example, if two people guarantee a borrower's debts for $50,000 each, the total guarantees are for $100,000, and not $50,000.

If a guarantee is signed by more than one person, as in a partnership guarantee, it is jointly and separately binding on those individuals. Both as individuals and as a group, they are responsible for the full amount of the guarantee.

PART THREE:
Equipment Security Contracts

Equipment security contracts use the borrower's farm equipment — and in some cases, other assets — to secure a loan or advance. An equipment security contract can use either specific equipment, a particular class of equipment, or all the borrower's equipment now owned or later acquired. This type of security agreement can be for a fixed amount or for a floating amount (with a set maximum).

The four typical equipment security agreements are:

- chattel mortgage;
- Section 178 of the Bank Act;
- equipment security agreement;
- conditional sales contract.

Chattel Mortgage

Definition

A chattel mortgage (or moveable property mortgage) is a contract in which the borrower transfers his/her equity and title in farm machinery to a lender as security for a loan. It is similar to a real estate mortgage, except that farm machinery is provided as security instead of real estate. Upon repayment of the debt, a chattel mortgage becomes void.

Characteristics

Chattel mortgages detail the names and addresses of the mortgagor (borrower) and mortgagee (lender), and normally specify the amount of the indebtedness. A detailed description of the machinery provided as security includes the name or make, the model and the serial and engine numbers. The mortgagor guarantees that he/she has title to the machinery, free and clear of any encumbrances, and promises :

- to repay principal and interest as specified;
- to insure machinery against loss or damage and assign this insurance to the lender;
- not to sell or dispose of the machinery without the written consent of the mortgagee;
- to keep machinery in good repair;
- to pay all fees and expenses if the machinery must be seized due to non-payment.

Rights of the Mortgagee

If a borrower fails to make a payment when due or if the security is jeopardized, the mortgagee may demand immediate full repayment of the debt. Security is considered in jeopardy if the borrower is making plans to sell the machinery without the lender's consent, if he/she files for bankruptcy, or if he/she fails to keep the machinery in good repair.

To recover an outstanding balance from the mortgagor, the lender may:

- seize the machinery within the guidelines of the Consumer Protection Act, if applicable;
- lease the machinery to a third party if the borrower does not redeem his/her interest in it;
- sell the machinery by public or private sale;
- purchase the machinery at the public sale;
- apply the sale proceeds to repay the borrower's outstanding debt and any sale expenses;
- sue the mortgagor for any outstanding balance.

Rights of the Mortgagor

If the machinery is seized and a demand promissory note was used in the agreement, the mortgagor must pay the total outstanding debt, as well as expenses of repossession and sale, to redeem his/her interest in the machinery. However, if he/she owes less than 25% of the original loan amount, the machinery cannot be seized without a court order or the borrower's written consent.

If a demand promissory note was *not* used, the mortgagor may reinstate the chattel mortgage agreement by paying the arrears, accrued interest to the payment date, and all expenses of repossession and sale preparation.

Section 178 of the Bank Act

Definition

A security agreement under Section 178 of the Bank Act is a legal document in which a chartered bank takes *continuing* security on a farmer's assets — which may include livestock and growing crops, as well as farm equipment and implements — in return for a loan. When providing equipment loans, banks generally take the security on the equipment — and not the inventory.

Characteristics

Normally, three documents are used in a Section 178 security agreement:

- **Notice of Intention**

The notice of intention is registered with the Bank of Canada, and lists the name and address of the farmer providing the security, the date, and the bank providing the loan. It serves as a notice that the farmer is involved in a Section 178 agreement.

- **The Agreement**

In the agreement, the borrower makes several promises to the lender:

- The borrower promises to pay any principal and interest as it comes due, as well as any expenses related to the security agreement.
- The borrower pledges to transfer any sale proceeds from assets covered under this security agreement to the bank if they are required to pay any related debts.
- He/she pledges to insure the assets against loss or damage, and assign this insurance to the bank.
- The borrower promises to pay any wages and salaries to persons he/she employs. This promise is required because, by law, wages and salaries owed must be paid *before* a borrower can repay loans secured under Section 178.

Under the terms of the agreement, in the event of default, the lender has the right to:

- seize and sell any of the assets involved;
- appoint an agent or receiver to ship, sell or otherwise deal with seized assets — including harvesting growing crops or caring for livestock;
- apply sale proceeds to repay any outstanding debt, as well as expenses related to seizing or selling the assets.

The agreement also provides rights for the borrower in the event of default. He/she has the right to:

- receive notice of time and place of seized collateral at *least five days* before public sale of livestock, and at *least 10 days* before public sale of grain, implements, equipment or fixtures;
- redeem the seized assets by paying the outstanding loan balance, accrued interest, costs of seizure, and costs of preparing collateral for public sale;
- expect the lender to use "all care and diligence" to obtain the best price for the assets sold. (The lender must advertise the sale in two newspapers at least five days prior to sale of livestock and two days prior to the sale of all other seized collateral.)

- **Security Listing**

The security listing provides a general description of the property covered by the agreement, as well as a detailed description of the place(s) where these assets are located. Assets not located at the listed locations are not covered by the agreement, and cannot be seized and sold to repay outstanding loans.

Equipment Security Agreement

Definition

An equipment security agreement (ESA) is a legal document giving a lender a security interest in either specific farm equipment or all farm equipment of the borrower in exchange for a loan or advance. Unlike a chattel mortgage, where the amount borrowed is fixed, the loan under a ESA can be either fixed or floating (to a set maximum).

Characteristics

Farm equipment used in an equipment security agreement can be defined as either:

- all machinery, tools, furniture, fixtures and vehicles now owned or later acquired;
- a specific list of current equipment plus all equipment in the same class later acquired;
- a specific list of current equipment plus any additional lists later attached.

For details of an ESA, see page 24 — General Security Agreement.

Under an ESA, the rights and covenants of the borrower and the lender are similar to corresponding rights and covenants in a general security agreement. The difference is that only equipment is used as security in an ESA, whereas *all* assets (except land) can be used in a general security agreement.

Conditional Sales Contract

Definition

A conditional sales contract is a legal document between a seller and a buyer in which the seller retains title to the goods as security until the buyer pays for them. However, the buyer receives immediate possession and use of the goods. A conditional sales contract for a farmer involves farm machinery and equipment.

Characteristics

A conditional sales contract includes a description of the loan amount, repayment plan and interests costs, and a description of the equipment including make, model, year, and serial and engine numbers. The contract also includes a promise by the buyer to repay the debt according to the repayment plan and to preserve the value of the machinery. The seller, although he/she holds title to the equipment, agrees to leave the buyer in unhindered possession of the machinery, provided terms and conditions are met.

Rights of the Conditional Seller

If the buyer is in default, the conditional seller can *either* repossess and sell the secured machinery **or** sue the buyer. He/she cannot do both.

In the case of *new* equipment, the seller must apply to the Farm Machinery Board for permission to repossess the machinery and must also mail a copy of the request to the purchaser. If the Board agrees, the seller may sell the equipment at a public sale and apply the sale proceeds to the outstanding debt and costs of repossession, storage and preparation for sale. The seller must notify the purchaser and the Board, in writing, 15 days prior to the sale. He/she must disclose the sale price of the machinery, the cost of repossession and sale preparations, and any repair costs.

Rights of the Conditional Buyer

A buyer can redeem the seized machinery by either:

- bringing payments up to date by paying the principal and interest in arrears, as well as any expenses of repossession;
- repaying the debt in full to obtain title, as well as possession.

PART FOUR:
Inventory Security Contracts

Inventory security contracts are legal documents giving a lender an interest in specific inventory, a particular class of inventory, or the borrower's total inventory as security for loans or advances. They can include inventory now owned or later acquired. Generally, an inventory security contract is used to secure operating lines of credit, with the loan amount being either fixed or floating (to a set maximum).

Farmers use three types of inventory security contracts:

- purchase-money security interest contract;
- Section 178 of the Bank Act;
- inventory security agreement.

Purchase-Money Security Interest Contract

Definition

A purchase-money security interest contract (PMSI) is a legal document between a supplier of farm inputs and a farmer. It gives the supplier a security interest in livestock raised or crops grown, as well as proceeds from the sale of livestock or crops in return for input supplies used by the farmer. Once the farmer pays for the supplies, the supplier no longer has an interest in the crops or livestock.

Characteristics

A PMSI lists the name and address of the farmer and the farm supply dealer, and describes the locations where the livestock or crops will be grown. It also includes the maximum credit limit allowed and the repayment terms.

Rights of the Lender

If a borrower cannot repay the debt in full under the agreed terms, the supplier may appoint a receiver or he/she can act directly to recover the outstanding debt. A supplier can repossess and dispose of the crops and livestock, and/or sue the borrower for any deficiencies in recovering the payment of the debt.

Rights of the Borrower

The borrower has the same rights to redeem crops or livestock as a borrower under a general security agreement — see page 24.

Priority of Claim

Under a PMSI, any claims made by a supplier must be satisfied before claims under any other security contract can be satisfied, regardless of their registration date. However, there are two stipulations:

- A copy of the PMSI must be provided to other lenders three months before livestock is produced or crops begin growing.
- The PMSI must have been necessary for the borrower to obtain inputs to produce livestock or crops.

Section 178 of the Bank Act

As discussed on page 42, an agreement under Section 178 of the Bank Act allows a chartered bank to take a continuing interest in a farmer's assets as security for loans or advances. When used as an inventory security contract, Section 178 uses a farmer's inventory as security — usually for obtaining operating lines of credit. Rights of both borrower and lender are the same as outlined on page 42.

Inventory Security Agreement

Definition

An inventory security agreement (ISA) is a legal document giving a lender a security interest in either specified inventory or all of a borrower's inventory as security for a loan. The loan amount can be either fixed or floating (to a set maximum). An ISA is similar to section 178 security, but it can also be used by lenders other than banks.

Characteristics

An inventory security agreement can include:

- all livestock and young after conception, all grain and crops maturing within one year, and all insurance claims related to inventory now owned or later acquired;
- a specific list of inventory, plus all inventory of the same type now owned or later acquired;
- a list of inventory, plus any additional lists later attached;
- the sale proceeds of any of these assets.

Under an inventory security agreement, the rights and covenants of the borrower and lender are the same as those in a general security agreement. See page 25.

PART FIVE:
Registration of Security Contracts

Just as land mortgages are registered to allow lenders to examine them in order to protect their interests, general security contracts are also registered for the same reason. Any security contract providing security on personal or moveable property will be registered at the provincial *Personal Property Registry (PPR)*, with the exception of a Section 178 contract. This latter contract must, instead, be registered with the *Bank of Canada*; its registration with the PPR is optional.

The Personal Property Registry

The PPR is regulated by the Personal Properties Security Act of Manitoba, and is located at:

15th Floor
Woodsworth Building
405 Broadway
Winnipeg, R3C 3L6
Phone: 945-2388.

Priority of Claims

The registration date of a security contract determines the order of claim. That is, the lender with the earliest registration date will receive his/her interest in the security first. The only exception is a purchase-money security interest, where a supplier's claims supercedes all others — regardless of their registration date — providing certain stipulations are met. (See page 49.)

Searching for Registered Security Agreements

Before you purchase used equipment, machinery, or vehicles of any kind, you should check with the PPR. If your potential purchase was originally secured by a security contract, it could still have a claim against it. You should ensure all claims are discharged before you buy.

Anyone can conduct a search — either over the telephone, if you have an account with the Registry, or in person if you don't. You must provide the exact name, address and birth date of the debtor, or if the debtor is a corporation, the exact corporate name and address. In the case of a vehicle, only the serial number is required to perform a search for any registered claims against it.

A $2 fee is charged for verbal reports provided in person or over the phone; written reports provided in person or by mail cost $7.

The Bank of Canada

The Bank of Canada is a federal registry regulated by The Bank Act, and it is where Section 178 security contracts are registered. It is located at:

161 Portage Avenue
Winnipeg, R3B 0Y4
Phone: 983-5530.

Priority of Claim

The registration date of a Section 178 security agreement registered with the Bank of Canada determines the priority of claim — except in the case of a purchase-money security interest. The latter, which will be registered with the PPR, supercedes all other claims — regardless of their registration dates — providing certain stipulations are met. (See page 49.)

Searching for Section 178 Security Agreements

Anyone can conduct a search to determine if security has been given by a borrower to a bank under Section 178 of the Bank Act. Searches must be done in person, at a cost of $2. The exact name and address of the borrower (individual or corporation) must be supplied; if the borrower is an individual, you must also supply his/her birth date.

When conducting such a search, you will only be given the name of the borrower's bank and the registration date of the agreement. Any further information, including the branch of the bank, can only be obtained by contacting the bank's regional office.